Supreme Court, U.S.
FILED

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NO. _____

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1994

WALTER A. CONNOR, JR.,
Petitioner,

vs.

WESTERN PENNSYLVANIA TEAMSTERS
AND EMPLOYERS PENSION FUND,
Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Walter A. Connor, Jr.
Respondent In Pro Per
Grubbs Road, P.O. Box 269
Gibsonia, Pennsylvania 15044
(412) 443-7348

QUESTION PRESENTED FOR REVIEW

WHETHER PETITIONER WAS AFFORDED DUE PROCESS OF LAW AS GUARANTEED BY ARTICLE OF AMENDMENT V OF THE UNITED STATES CONSTITUTION.

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OPINIONS BELOW

The Petitioner filed a Fraudulent Conveyance of Personal Property action in the Civil Division of the Court of Common Pleas of Allegheny County, Pennsylvania, on April 9, 1993, and docketed at G.D. 93-13015.

Respondent Pension Fund filed a petition of Notice of Removal to the Judges of the United States District Court for the Western District of Pennsylvania, on September 2, 1993, and docketed at 93-1463.

The Petitioner and Respondent brought motions for summary judgment. The District Court denied Petitioner's motion for summary judgment and granted

Respondent's cross motion for summary judgment on December 23, 1993.

Petitioner appealed the District Court's decision to the United States Court of Appeals for the Third Circuit on December 31, 1993, and was docketed at 94-3023/94-3024.

The United States Court of Appeals for the Third Circuit affirmed the judgment of the District Court on November 7, 1994.

Petitioner filed a petition for rehearing en banc, and the Court of Appeals for the Third Circuit denied the petition for rehearing on February 3, 1995.

JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit was entered on February 3, 1995. Petition for rehearing was denied on February 3, 1995. The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C. Section 1254(1).

STATUTORY PROVISION INVOLVED

Article of Amendment V of the Constitution of the United States which states in pertinent part:

> No person shall be deprived of life, liberty, or property without due process of law.

STATEMENT

On April 1, 1993, as well as on the first day of each subsequent month, the Respondent, the Western Pennsylvania Teamsters and Employers Pension Fund, (herein after "Respondent"), has voluntarily diverted the monthly pension benefit, which is rightfully the property of the Petitioner, to a third party; i.e. to the Internal Revenue Service.

Respondent alleges and maintains that its actions are compelled by Internal Revenue Service Form 668-W(c).

The form in question came to the Respondent's office accompanied by a "cover" letter which referred to "take home pay." Both the letter and the Form

668-W(c) were dated February 8, 1993, and arrived at the Respondent's office via United States Mail and were routinely date-stamped-in on March 3, 1993. There was no accompanying Notice of Seizure, Form 2433, even though the Internal Revenue Code states quite clearly in Section 6502(b):

> The date on which a levy upon property or right to property is **made** shall be the date on which the Notice of Seizure provided in Section 6335(a) is given. (Emphasis Added).

The absence of Form 2433 clearly signifies that no levy was ever **made** and that no levy exists or ever existed in the instant case.

Clearly Form 668-W(c) standing alone, is absent power to compel its recipient to do anything at all.

Further, on its face the form makes the following request:

> If no money is owed to this person, please complete the back of Part 3, attach it as a cover to the rest of the form and return all of the parts in the enclosed envelope.

Respondent should have complied with the above request for the following reasons:

A. There was no Notice of Seizure given. Consequently, no levy was ever made.

B. On the date Respondent received the form, it had no money or other obligation due and owing to the Petitioner; the monthly pension benefit for March, 1993 had been disbursed two days earlier on March 1, 1993.

The reverse side of Form 668-W(c) gives no instructions to its recipient and makes no requests at all. Instead, it

quotes excerpts of several Internal Revenue Code sections beginning with subparagraph (b) of Section 6331, which states in pertinent part:

> ... a levy shall extend only to property possessed and obligations existing at the time thereof.

An exception to the principle established above is created by subparagraph (e) Continuing levy on salary and wages.

> 1. Effect of levy. The effect of a levy on salary and wages payable to or received by a taxpayer shall be continuous from the date such levy is first **made** until such levy is released under Section 6343. (Emphasis Added).

Treasury Regulation 26 C.F.R. 301.6331(c) defines salary and wages as follows:

> Salary and wages includes compensation for services paid in the form of fees, commissions, bonuses, and similar items. (Emphasis added).

As shown, supra, the Treasury Department's own definition for salary and wages totally excludes any mention of, or reference to, monthly pension benefits. Consequently, pension benefits can only be properly reached via Subparagraph (c) of Internal Revenue Code Section 6331, which provides for successive seizures and requires that a subsequent levy be **made** each time property is seized and diverted.

Nearly thirty years ago the United States Congress passed the FEDERAL TAX LIEN ACT of 1966. The purpose of this legislative action was to adjust the federal tax laws to the Uniform Commercial Code. This important bill states in pertinent part:

> This bill is in part an attempt to conform the lien provisions of the Internal Revenue laws to the concepts developed in the Uniform Commercial Code. It represents an effort to

> adjust the provisions in the Internal Revenue laws relative to the collection of taxes...

Paragraph D(1) **Effect of levy (section 6331(b) of the code)** reads as follows:

> In the provision of present law authorizing the Internal Revenue Service to levy upon the property of a taxpayer who owes delinquent taxes, the bill adds a sentence specifying that this right to levy extends **only** to property of the taxpayer and in the possession of the person on whom the levy is **made**, or obligations to the taxpayer of the person on whom the levy is **made** WHICH ARE EXISTING AT THE TIME OF THE LEVY. The bill intends to make it clear, for example, that if a levy is **made** upon the bank account of a delinquent taxpayer and the bank surrenders the balance in the account at the time the levy is **made, THIS LEVY HAS NO EFFECT UPON SUBSEQUENT DEPOSITS MADE IN THE BANK BY THE TAXPAYER. IT IS INTENDED THAT THESE MAY BE REACHED ONLY BY SUBSEQUENT LEVIES**. (Emphasis Added).

Pursuant to the principles established, supra, by the FEDERAL TAX LIEN ACT of 1966: if a levy had been **made** by serving a Notice of Seizure, Form 2433, along with the Form 668-W(c) which was sent via mail and date-stamped-in by the Respondent on March 3, 1993, it would not have had <u>any</u> effect upon the March, 1993 monthly benefit, which had already been disbursed. Further, it could not reach the **April, 1993 benefit** which **would correlate to a subsequent deposit**, and as such would require that a subsequent levy be **made** which could only be accomplished by serving a subsequent Notice of Seizure, Form 2433.

Thus, due process would require that pursuant to Subparagraph (c) of Internal Revenue Code Section 6331, a separate, new, successive seizure be **made** for each

month that property was diverted. This protocol was not followed; therefore the constitutional mandate that property not be taken without due process of law was violated.

REASON FOR GRANTING THE PETITION

Because no Notice of Seizure was ever given to Respondent, no levy was ever **made**. Therefore, Respondent was negligent and failed to exercise due diligence in its capacity as Petitioner's fiduciary, and failed to safeguard and deliver in a timely manner, funds which are rightfully the property of the Petitioner. Respondent chose instead to voluntarily, repeatedly, and fraudulently convert such property to a third party; thus depriving Petitioner of his property as well as his constitutionally guaranteed right to due

process of law before his property was taken.

CONCLUSION

The petition for a writ of certiorari should be granted, the decision of the lower courts should be reversed, and Petitioner should be granted the relief prayed for in his original complaint.

Respectfully submitted,

Walter A. Connor, Jr.

Walter A. Connor, Jr.,
Respondent In Pro Per
Grubbs Road, P.O. Box 269
Gibsonia, Pennsylvania 15044
(412) 443-7348

APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WALTER A. CONNOR, JR. Plaintiff	)	Civil Action No. 93-1463
vs.	)	
WESTERN PENNSYLVANIA TEAMSTERS AND EMPLOYEES EMPLOYEES PENSION FUND Defendant.	)	

O R D E R

AND NOW, this 23rd day of Dec., 1993, after the plaintiff, pro se, filed an action in the above-captioned case, and after cross motions for summary judgment were brought by the plaintiff, Walter A. Connor, Jr. and the defendant, Western Pennsylvania Teamsters and Employees Pension Fund ("the Pension Fund"), as well as motions for a temporary restraining order and preliminary injunction were submitted by the plaintiff, and after a Report and Recommendation was filed by the Chief United States Magistrate Judge, and

the parties were granted ten days after being served with a copy to file written objections to the Report and Recommendation, and upon consideration of the objections filed by the plaintiff and the defendant, and the plaintiff's response to the defendant's objections, and upon independent review of the pleadings, and the Chief Magistrate Judge's Report and Recommendation, which is adopted as the opinion of this Court,

IT IS ORDERED that the plaintiff's motion for summary judgment (Docket No. 6) is denied, that the defendant's cross motion for summary judgment (Docket No. 17) is granted, and that the plaintiff's motions for temporary restraining order (Docket No. 15) and preliminary injunction (Docket No. 16) is denied as moot.

"s/ Donald E. Ziegler"
United States District Judge

cc: Walter A. Connor, Jr.
Grubbs Road, Box 269
Gibsonia, PA 15044

Charles J. Streiff
1450 Two Chatham Center
Pittsburgh, PA 15219-3427

Honorable Robert C. Mitchell, Chief
United States Magistrate Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 94-3023/3024

WALTER A. CONNOR, JR.,
Appellant in No. 94-3023

v.

WESTERN PENNSYLVANIA TEAMSTERS
AND EMPLOYERS PENSION FUND
Appellant in No. 94-3024

Appeal From An Order of Court Entered
December 23, 1993, In the United States
District Court For the Western District
of Pennsylvania at Civil Action
No. 93-1463 by the
Hon. Donald E. Ziegler (District Judge)

Submitted Pursuant to
Third Circuit LAR 34.1(a)
November 1, 1994

Before: GREENBERG, MCKEE, Circuit Judges
and POLLAK, District Judge*

JUDGMENT ORDER

After consideration of all contentions raised by the appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court dated December 23, 1993, be and is hereby affirmed.

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*Honorable Louis H. Pollak, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

Costs taxed against the appellant/cross-appellee.

BY THE COURT,

"s/ unintelligible signature"
Circuit Judge

Attest:
"s/ P. Douglas Sisk"
P. Douglas Sisk, Clerk

Dated: November 7, 1994

Costs taxed in favor of Western Pennsylvania Teamsters and Employers Pension Fund as follows:

Total for Brief.....	$110.20
Total for Supplemental Appendix	63.50
Total for Reply Brief.....	34.80
Total for Docketing Fee....	105.00
Total.....	$331.50

Certified as a true copy and issued in lieu of a formal mandate on February 13, 1995.

Teste: "s/ P. Douglas Sisk"

Clerk, U.S. Court of Appeals for the Third Circuit.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 94-3023
No. 94-3024

WALTER A. CONNOR, JR.,
Appellant

v.

WESTERN PENNSYLVANIA TEAMSTERS
AND EMPLOYERS PENSION FUND

SUR PETITION FOR REHEARING

BEFORE: SLOVITER, Chief Judge, BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD, ALITO, ROTH, LEWIS, McKEE, SAROKIN, Circuit Judges and POLLAK, District Judge*

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who

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*Voted as to Panel Rehearing Only.

participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court

"s/ unintelligible signature"
Circuit Judge

Dated: Feb 03 1995